premises only after they are refused admittance after adequately announcing their authority and purpose. *Wilson v Arkansas*, 514 U.S. 927, 115 S.Ct. 1914, 131 L.Ed.2d 976 (1995). An informant's report of the presence of firearms inside the residence and the fear of the agents that evidence may be destroyed is not sufficient to provide the exigent circumstances necessary to excuse the knock an [sic] announce requirement. *United States v Bates*, 84 F.3d 790 (1996). The burden is on the prosecution to establish by a preponderance of the evidence that the search and seizure was constitutionally valid. *Schneckloth v Bustamonte*, 412 U.S. 218, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973); *United States v Finch*, 998 F.2d 349 (1993). All evidence and statements obtained as a result of the illegal entry should be suppressed as fruit of the poisonous tree. *Wong Sun v United States*, 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963).

In the case at bar, the police officers failed to adequately knock and announce their authority and purpose prior to forcing entry into the targeted premises. The officers announced their presence and purpose but waited only three to five seconds before ramming the door and entering the premises. At the preliminary examination, police officer Jamal Good specifically stated that the officers rammed the door without giving anyone an opportunity to answer the door (Exam T. 13). It is manifest that the police did not wait to be refused admittance before forcibly entering the premises, and the subsequent search of the premises was in violation of the Fourth and Fourteenth Amendments to the United States Constitution, Article 1, Section 11 and 17 of the Michigan Constitution of 1963, and MCL 780.656. The evidence and statements

seized as a result of the illegal search and seizure should be suppressed. *Wong Sun v United States, supra.*

STATE OF MICHIGAN
IN THE COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN

Plaintiff-Appellant,

vs.

BOOKER HUDSON,

Defendant-Appellee.

PLAINTIFF-APPELLANT'S BRIEF ON APPEAL
AND IN SUPPORT OF MOTION
FOR PEREMPTORY REVERSAL

* * *

[p.4]

The People bring this appeal, arguing that while the police officers may have violated the knock-and-announce statute, MCL 780.656; MSA 28.1259(6), and also the Fourth Amendment, suppression is an inappropriate sanction. No sound was heard inside or outside the house suggesting an attempt to destroy property, or escape, or endanger the police officers, yet the officers [p.5] broke into the house immediately after announcing their purpose, the door being broken down within five seconds after "Police" was announced by the officers.

* * *

[p.6]

The trial court committed clear legal error in failing to follow Michigan Supreme Court precedent which has not been overruled by the United States Supreme Court and does not conflict with United States Supreme Court decisions. The trial court's application of the exclusionary

rule to a violation of the knock-and-announce rule resulting in suppression of the evidence is contrary to Michigan Supreme Court precedent and must be overruled.

* * *

[p.7]

Dated: January 31, 2001

STATE OF MICHIGAN
IN THE COURT OF APPEALS

PEOPLE OF THE
STATE OF MICHIGAN

Plaintiff-Appellant,

vs.

BOOKER HUDSON,

Defendant-Appellee.

Court of Appeals
No: 230594
Lower Court No: 98-10141

DEFENDANT-APPELLEE'S BRIEF ON APPEAL

* * *

[p.5]

It is undisputed that there was a violation of the knock and announce requirement incorporated into the Fourth Amendment to the United States Constitution, as applied to the states through the Fourteenth Amendment to the United States Constitution. No sound was heard inside or outside the house suggesting an attempt to destroy property, or escape, or endanger the police officers, yet the police officers broke into the house immediately after [p.6] announcing their purpose, the door being broken down within three to five seconds after "police" was announced by the officers (Appellant's Brief, Pg. 4; Evidentiary Hearing Transcript, Pgs. 13-17). Police Officer Jamal Good testified that the officers did not wait to see if anybody would answer the door (Evidentiary Hearing Transcript, Pg. 15).

Notwithstanding the decisions of the Michigan Supreme Court holding that the exclusionary rule does not apply to a violation of the Fourth Amendment "knock and

announce" principle, the trial court suppressed the evidence. The issue before this Honorable Court is whether the trial court was bound by Michigan Supreme Court precedent as to issues of federal constitutional law where the Michigan Supreme Court decisions were contrary to, or involved an unreasonable application of, clearly established federal law, as determined by the Supreme Court of the United States. It is defendant's position that the trial court was not bound by such precedent and that the decision of the trial court suppressing the evidence seized in violation of the Fourth and Fourteenth Amendments to the United States Constitution should be affirmed.

* * *

[p.18]

Dated: 4/3/01

STATE OF MICHIGAN

THIRD JUDICIAL CIRCUIT COURT
CRIMINAL DIVISION

PEOPLE OF THE
STATE OF MICHIGAN

Case No. 98-10141

vs.

BOOKER HUDSON,

Defendant.

WAIVER TRIAL – VOLUME I of II

BEFORE THE HONORABLE
DEBORAH A. THOMAS, JUDGE
THIRD JUDICIAL CIRCUIT COURT
CRIMINAL DIVISION
Tuesday, October 22, 2002, Detroit, Michigan

* * *

[p.6]

JAMAL GOOD

DIRECT EXAMINATION

* * *

Q: Do you remember what order did you enter?

A: I was first through the door.

Q: Were you given a title assignment?

A: Yes, sir, I was the shotgun man.

Q: You're the shotgun man. That's the language we understand. And as you entered the location, explain to the Judge how you entered, from the minute you entered the location, what happened, what did you see?

A: As I go in, I see the defendant sitting in a chair up against the east wall.

Q: You say the Defendant. Is that somebody you see in [p.7] the courtroom today?

A: Yes, sir. The gentleman in the blue shirt sitting with the defense counsel.

MR. HAMMOUD [Prosecutor]: For the record, identifying the Defendant, Booker Hudson.

Q: Did you know Mr. Hudson before that day?

A: No, sir.

Q: And you said he was sitting in a chair?

A: Yes, sir.

Q: Against what?

A: The east wall.

Q: Let me ask you first, were you the person to open the door to the location?

A: Yes, sir.

Q: Did you knock? What happened? Explain to us the entry.

A: I announced our presence and purpose and went into the dwelling.

Q: How long did you wait after you announced your –

THE COURT: That doesn't tell me anything.

MR. HAMMOUD: I'm going to ask him for more details.

THE COURT: Thank you.

[p.8]

Q: I want details. You announce your presence and purpose. How do you do that? You stand at the door, what do you say?

A: Police, search warrant.

Q: Did you knock on the door?

A: No.

Q: So you are out there. Was there a porch?

A: I believe there is a porch. I don't really recall the front of the house.

Q: Police, search warrant and you opened that door?

A: Yes, sir.

Q: Did you have to break it down?

A: I don't believe we had to force it.

Q: Was it a front door that you can just open like a knob that's not locked, or how was it, if you remember?

A: I believed I just opened the door and went in. Turned the knob and went inside. I'm not sure it was a screen door, if it was the interior door.

Q: How long did you wait from the time you said, police, search warrant, and the time you opened the door and went inside?

A: I guess maybe three to five seconds.

Q: Pretty fast?

A: Real fast, yes.

[p.9]

Q: Did you wait to see if somebody comes and open the door?

A: No. No.

Q: Why did you go in right away?

A: It's a safety factor. I've been shot at numerous times going into drug houses. So it's a safety factor.

Q: And besides the Defendant inside, who did you see, civilians, I mean? I'm sorry. Other than the people that came with you, who did you see inside?

A: There were numerous other persons running throughout the house.

Q: And the Defendant was sitting?

A: Yes, sir, he was.

Q: Did he try to run when you entered?

A: No, sir, he didn't.

Q: Tell us what else did you see the Defendant or around him?

A: Just other personnel. There were other people in the house. He was sitting in a chair. He didn't try to run.

* * *

STATE OF MICHIGAN

THIRD JUDICIAL CIRCUIT COURT
CRIMINAL DIVISION

PEOPLE OF THE STATE OF MICHIGAN

Case No. 98-10141

vs.

BOOKER HUDSON,

Defendant.

WAIVER TRIAL – VOLUME II of II

BEFORE THE HONORABLE
DEBORAH A. THOMAS, JUDGE
THIRD JUDICIAL CIRCUIT COURT
CRIMINAL DIVISION
Wednesday, October 23, 2002, Detroit, Michigan

* * *

[p.125]

VERDICT OF THE COURT

* * *

Certainly, it's unquestionable that at a minimum, the Defendant possessed the drugs that were in his pants. They were on his person. As to the drugs that were found on the coffee table, there is no testimony that the Court can look at to determine where that came from. So I cannot assign it to anybody.

* * *

[p.127]

So for the purposes of constructive possession as it relates to the weapon, the Court finds that the Court cannot find a nexus between the weapon unique unto the Defendant because of where it was found was not in a space unique to his use or a piece of furniture unique to his use. So I'm – for those reasons and in keeping with that law as the Court views it, I'm going to have to find him not guilty on the felony firearm.

* * *

[p.129]

So for those drugs that were certainly found on his person, he is certainly guilty of possession. He is being charged with possession with the intent to deliver. I've only got five rocks that I can attribute to him at this juncture. He says he was on the receiving end. I find him guilty of possession with intent – possession, not the intent, possession of a controlled substance same being cocaine.

* * *

THE COURT: Do I have to say how many grams of cocaine he possessed?

MR. HAMMOUD: If you don't, your Honor, the [p.130] default is less than 25. I talked about it.

THE COURT: Well, when they test it out, it was less than 25 grams.

* * *

STATE OF MICHIGAN

THIRD JUDICIAL CIRCUIT COURT –
CRIMINAL DIVISION

PEOPLE OF THE
STATE OF MICHIGAN

File No. 98-10141

v

BOOKER HUDSON,

Defendant.

SENTENCE

BEFORE THE HONORABLE
CAROLE F. YOUNGBLOOD, JUDGE
Detroit, Michigan – December 19, 2002

* * *

[p.5]

THE COURT: Okay. I'm going to sentence you to 18 months probation under the following conditions: First of all, you must enter a residential substance abuse treatment program and finish that program. And when you get out, you must have alcohol and drug testing whenever your probation officer tells you to do so. You must go to Narcotics Anonymous meetings at least three times per week. I'm only doing it to help you stay off of drugs. And you must not change your residence without the permission of the Probation Officer. . . . You must pay a supervision fee of $180 at the rate of $10 per month. You must pay court costs of $165 a year at the rate of $16.50 per month. And you must pay your court

appointed attorney fees once they have been determined. You have credit for 59 days that you spent in jail.

* * *